

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHEFS DIET ACQUISITION CORP. d/b/a
CHEFS DIET,

Plaintiff,

CASE NO: 14-CV-8467 (JMF)

v.

LEAN CHEFS, LLC, NICHOLAS ZAZZA and
ARTHUR GUNNING,

Defendants.

**DECLARATION OF ARTHUR GUNNING IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFF’S APPLICATION FOR PRELIMINARY INJUNCTION**

I, Arthur Gunning, declare as follows:

1. I am a founding partner of Lean Chefs, LLC (“Lean Chefs”).
2. I began working in the gourmet diet delivery market in 1999. Since that time I have been a partner and been in charge of sales and marketing at various companies in this market.
3. Lean Chefs launched in November of 2013 and has been growing in market share and sales every month since that time.
4. One of the key reasons for Lean Chefs’ success has been a substantial investment in marketing and advertising. To date, we have invested over one million dollars building our brand name and distinguishing ourselves from our competition.
5. In addition to marketing and advertising, Lean Chefs also focuses on quality of our food and customer service. Our kitchen prepares meals solely for Lean Chefs and I am heavily involved with quality control in the kitchen and customer service, including rectifying customer complaints.

6. I have extensive experience in purchasing data and customer leads. I have been involved in the purchase of millions of names in my capacity at previous companies, and have purchased hundreds of thousands of names since Lean Chefs' launch.

7. I purchased and continue to purchase data from large data brokerage firms such as Epsilon and at industry tradeshow such as Leadcon and Ad Tech. Data across these sources is similar and often duplicative. Customer data in this industry is not unique, but rather are based on common demographics including income and age, and geographic regions.

8. Chefs Diet Delivery, LLC and Zone Chefs have acquired their data from these same publicly available sources and pay in the range of \$1,500-\$2,000 for 25,000 leads.

9. Our brand at Lean Chefs caters to wealthy individuals who care about the quality of the food they eat and about eating healthy. We target customers who make over \$75,000 a year.

10. Through this litigation, I became aware that Chefs Diet Acquisition Corporation ("CDAC") had sent Nick Zazza a list of contacts that it markets to in 2010. Upon becoming aware of this list, we isolated the data and immediately stopped using it.

11. The data CDAC disclosed to us was never disseminated. We are not in the business of selling or brokering customer data and therefore have and never would disseminate any data in our possession.

12. CDAC advertises that Chefs Diet is a "five-star gourmet diet delivery service." I created this phrase for marketing and advertising purposes and is not based on any actual rating system or other recognition with respect to the actual quality of the products. As a matter of fact Lean Chefs is the only company in the Gourmet Diet Delivery industry within the Tri-State area with a 5 star rating on Yelp. Chefs Diet by comparison has 2 and a half stars on Yelp.(I have visited the Yelp pages

for all the Gourmet diet delivery programs in the Tri-State area once again 1/23/15 at 4:36pm to confirm that we are still the only company with 5 stars)

13. Since launching Lean Chefs, I have sent customer contact information of least four customers to Michael McDonnell at CDAC. These potential customers were located outside of Lean Chefs' service area had but expressed interest in Lean Chefs

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on January 23, 2015.

Arthur Gunning
Arthur Gunning